## STATE OF ARIZONA FILED

JUN 2 7 2001

STATE OF ARIZONA

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2	DEPARTMENT OF INSURANCE		
3	In the Matter of:		
4	ORDER SUMMARILY SUSPENDING  DOCKET No. 01A-159-INS  ORDER SUMMARILY SUSPENDING		
5	Respondent.  CERTIFICATE OF AUTHORITY AND NOTICE OF HEARING		
6			
7	The Arizona Department of Insurance (the "Department") alleges that Amwest Surety		
8	Insurance Company ("Respondent") has violated provisions of Arizona Revised Statutes ("A.R.S."),		
9	Title 20. In light of the serious nature of these allegations, the Director of Insurance for the State of		
0	Arizona ("Director") finds that the public health, safety and welfare imperatively require emergency		
1	action, within the meaning of A.R.S. §41-1092.11(B).		
2	THEREFORE, IT IS ORDERED summarily suspending the Arizona certificate of authority held		
3	by Respondent, effective immediately, pending the proceedings commenced this date.		
4	EFFECTIVE this day of June, 2001.		
5	Calica		
6	CHARLES R. COHEN Director of Insurance		
7	Director of insurance		
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## **NOTICE OF HEARING**

PLEASE TAKE NOTICE that pursuant to the provisions of A.R.S. §§ 20-165, 41-1061 through and including 41-1066 and 41-1092.01, the above-captioned matter will be heard before the Director of Insurance of the State of Arizona or his duly designated representative, on the 7th day of August, 2001, at 9:00 a.m., at the Office of Administrative Hearings, 1400 West Washington Street, Suite 101, Phoenix, Arizona 85007 (the "Hearing").

Motions to continue this matter shall be made in writing to Administrative Law Judge Lewis Kowal not less than fifteen (15) days prior to the date set for the hearing. A copy of any motion to continue shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of Administrative Hearings.

A.R.S. §20-164(B) entitles any person affected by this hearing to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary evidence, to examine witnesses, to present supporting evidence and to have subpoenas issued by the Administrative Law Judge to compel attendance of witnesses and production of evidence.

If Respondent is represented by counsel, the attorney shall be licensed to practice law in the State of Arizona or, Respondent is an insurer, it may be represented by a corporate officer, pursuant to A.R.S. §20-161(B).

Pursuant to A.R.S. §41-1092.07(D), a clear and accurate record of the proceedings will be made by a court reporter or by electronic means. Any party that requests a transcript of the proceeding shall pay the cost of the transcript to the court reporter or other transcriber.

Questions concerning issues raised in this Notice of Hearing should be directed to Assistant Attorney General Shelby L. Cuevas (602) 542-7725, 1275 West Washington Street, Phoenix, Arizona 85007.

## NOTICE OF APPLICABLE RULES

On January 23, 1992, the Arizona Department of Insurance adopted A.A.C. R20-6-101 through 20-6-115, setting forth the rules of practice and procedure applicable in contested cases before the Director of Insurance. The hearing will be conducted pursuant to these rules.

PURSUANT TO A.A.C. R20-6-106, RESPONDENT SHALL FILE A WRITTEN ANSWER WITHIN 20 DAYS AFTER ISSUANCE OF THIS NOTICE OF HEARING AND SHALL MAIL OR DELIVER A COPY OF THE ANSWER TO THE ASSISTANT ATTORNEY GENERAL DESIGNATED ABOVE. THE ANSWER SHALL STATE RESPONDENT'S POSITION OR DEFENSE AND SHALL SPECIFICALLY ADMIT OR DENY EACH ASSERTION IN THE NOTICE OF HEARING. ANY ASSERTION NOT DENIED SHALL BE DEEMED TO BE ADMITTED. ANY DEFENSE NOT RAISED IN THE ANSWER SHALL BE DEEMED WAIVED. IF AN ANSWER IS NOT TIMELY FILED, RESPONDENT SHALL BE DEEMED IN DEFAULT AND THE DIRECTOR MAY DEEM THE ALLEGATIONS ARE TRUE, AND TAKE WHATEVER ACTION IS APPROPRIATE, INCLUDING SUSPENSION OR REVOCATION OF A CERTIFICATE OF AUTHORITY, IMPOSITION OF A CIVIL PENALTY AND/OR RESTITUTION TO ANY PARTY INJURED.

PERSONS WITH DISABILITIES MAY REQUEST REASONABLE ACCOMMODATIONS SUCH AS INTERPRETERS, ALTERNATIVE FORMATS, OR ASSISTANCE WITH PHYSICAL ACCESSIBILITY. REQUESTS FOR ACCOMMODATIONS SHOULD BE MADE AS EARLY AS POSSIBLE TO ALLOW TIME TO ARRANGE THE ACCOMMODATIONS. IF YOU REQUIRE ACCOMMODATIONS, PLEASE CONTACT THE OFFICE OF ADMINISTRATIVE HEARINGS AT (602) 542-9826.

The Department alleges:

- 1. Respondent is domiciled in Nebraska and presently holds a certificate of authority issued by the Arizona Department of Insurance ("Department") to transact surety insurance.
- 2. On June 7, 2001 the District Court of Lancaster County, Nebraska, in <u>State of Nebraska</u>

  <u>ex rel L. Tim Wagner, Director of Insurance of the State of Nebraska v. Amwest Surety Insurance</u>

  <u>Company</u>, CI 01-2101, issued an Order of Liquidation, Declaration of Insolvency and Injunction. The

  Order appoints Director Wagner as the Liquidator of Respondent.
- 3. The Nebraska Court, in issuing its Order, found that Respondent, based on its quarterly financial statement as of March 31, 2001 which states that Respondent's liabilities exceed its assets by approximately \$1.5 million, is insolvent. The Nebraska Court further found that the immediate appointment of a liquidator was necessary to protect the creditors, claimants and policyholders of Respondent.
- 4. Respondent no longer meets the requirements for the authority originally granted within the meaning of A.R.S. §20-219(2).
- 5. Respondent is in an unsound condition or in such condition as to render its further transaction of insurance in this state hazardous to the policyholders or to the people of this state, within the meaning of A.R.S. §20-220(A)(3).

WHEREFORE, if after hearing the Director makes a finding of one or more of the above-described allegations, the Director may suspend or revoke Respondent's certificate of authority pursuant to A.R.S. §§20-219 and 20-220(A)(3).

Pursuant to A.R.S. §20-150, the Director of Insurance delegates the authority vested in the Director of Insurance of the State of Arizona, whether implied or expressed, to the Director of the Office of Administrative Hearings or his designee to preside over the hearing of this matter as the

Administrative Law Judge, to make written recommendations to the Director of Insurance consisting of 1 2 proposed findings of fact, proposed conclusions of law and a proposed order. This delegation does not include delegation of the authority of the Director of Insurance to make the order on hearing or other 3 final decision in this matter. 4 5 Pursuant to A.R.S. §41-1092.01, your hearing will be conducted through the Office of Administrative Hearings, an independent agency. Enclosed is a copy of the procedures to be followed. 6 DATED this day of June, 2001. 7 8 9 CHARLES R. COHEN, DIRECTOR Arizona Department of Insurance 10 11 COPIES of the foregoing mailed/delivered 12 this 27th day of June 2001, to: 13 L. Tim Wagner, Director of Insurance Liquidator of Amwest Surety Insurance Company 14 Nebraska Department of Insurance Terminal Building 15 941 "O" Street, Suite 400 Lincoln, NE 68508-3639 16 Mike FitzGibbons 17 Special Deputy Liquidator 5230 Las Virgenes Road 18 Calabasas, CA 91302 19 Jack King, Executive Director Arizona Insurance Guaranty Funds 20 3443 North Central, Suite 1000 Phoenix, AZ 85012 21 Shelby L. Cuevas 22 Assistant Attorney General 1275 West Washington 23 Phoenix, AZ 85007

1	Lewis D. Kowal, Administrative Law Judge Office of Administrative Hearings
2	1400 West Washington, Suite 101 Phoenix, AZ 85007
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4	Sara M. Begley, Deputy Director Steven P. Ferguson, Assistant Director Deloris E. Williamson, Assistant Director
5	Mary M. Butterfield, Assistant Director Leslie Hess, Financial Affairs Legal Analyst
6	Scott Greenberg, Chief Operating Officer Arizona Department of Insurance
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